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Statelessness and Conservation

Exploring the Implications of an International Governance Agenda

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Abstract

The world's remaining biodiversity-rich regions are often located in borderlands or physically remote areas which are frequently also inhabited by stateless peoples, who

are then subjected to policies expressly designed to exclude or restrict local livelihood activities. This situation has been exacerbated by the tendency for international non-governmental organisations to join forces with the State to promote their conservation agenda. Whilst the political and environmental implications of this trend have been explored within the academic literature, the consequences for the survival of disempowered and marginalised stateless communities have received little attention. This article will focus upon stateless peoples enmeshed within a policy framework influenced by globalised environmental priorities and directed by international conservation NGOs in South-East Asia. It will explore how stateless peoples' capacities are undermined by models of 'participation' used by these actors and underline the importance of recognising stateless peoples' rights and responsibilities in marine natural resource management.

Keywords

stateless – Bajau – Sabah – conservation – governance

1 Introduction

Global biodiversity conservation policy is heavily influenced by international agreements such as the United Nations Convention on Biological Diversity (*hereinafter*: CBD), which includes 193 states as signatory parties. The current CBD Strategic Plan for Biodiversity incorporates a number of targets often referred to collectively as the Aichi Biodiversity Targets. These targets include a goal of setting aside 17 per cent of terrestrial and inland waters and 10 per cent of marine environments as protected areas. Opinion differs as to the appropriate magnitude of these targets, with recommendations including protecting up to 40 per cent of the world's marine environment to ensure biodiversity conservation.¹ The Aichi Targets are integrated into international and national initiatives to conserve biodiversity focusing on so-called biodiversity 'hotspots'. These are regions accorded priority for environmental protection on account of representing a combination of species and ecosystem irreplaceability and vulnerability. Recent estimates indicate that conservation investment in the 35 currently recognised hotspots exceeds US\$1

1 Helen E Fox, Carrie S Soltanoff, Michael B Mascia, Kelly M Haisfield, Alfonso V Lombana, Christopher R Pyke and Louisa Wood, 'Explaining Global Patterns and Trends in Marine Protected Area (MPA) Development' (2012) 36 *Marine Policy* 1131.

billion,² underlining the significance accorded to such regions since the development of interest in hotspot identification.³

Whilst approximately 12 per cent of the global land surface is included in the International Union for the Conservation of Nature (*hereinafter*: IUCN) protected area categories, marine protected areas amount to just two and a half per cent of the world's maritime exclusive economic zones.⁴ This paucity of coverage reflects a diverse range of factors, including the inevitable difficulties associated with justifying and enforcing restrictions on marine resource usage in the context of rapidly growing coastal populations, particularly in developing countries. In these circumstances, new institutional alliances and frameworks may be required to design, enforce and monitor marine conservation programmes if they are to succeed in addressing the threats to biodiversity associated with human activity.

The Coral Triangle Initiative on Coral Reefs, Fisheries and Food Security (*hereinafter*: CTI), announced in 2009, represents one such development, with six nations (Indonesia, Malaysia, Papua New Guinea, the Philippines, the Solomon Islands and Timor Leste) co-operating in a ten-year regional Plan of Action covering 5.7 million km² of waters and involving a coastal population of around 150 million people. The conservation rationale for the CTI lies with the unique diversity of marine life in waters shared by these countries, which is reflected in their inclusion in three of the world's biodiversity hotspots. The CTI programme envisages improvements in areas including fisheries management and marine conservation, with specific actions associated with each goal. Fundamental to the creation of the CTI was the NGO sector, which formed a new coalition of three major international organisations (Conservation International, The Nature Conservancy, and the World Wide Fund for Nature) in order to network with governments, secure funds and collect the necessary environmental information to justify this new international institution reflective of their shared vision.⁵ This process of networking and

2 Russell A Mittermeier, Will R Turner, Frank W Larsen, Thomas M Brooks and Claude Gascon, 'Global Biodiversity Conservation: the Critical Role of Hotspots' in Frank E Zachos and Jan C Habel (eds), *Biodiversity Hotspots: Distribution and Protection of Conservation Priority Areas* (Springer 2011).

3 Norman Myers, Russell A Mittermeier, Cristina G Mittermeier, Gustavo AB da Fonseca and Jennifer Kent, 'Biodiversity Hotspots for Conservation Priorities' (2000) 403 *Nature* 6772, 853.

4 Sophie Marinesque, David M Kaplan and Lynda D Rodwell, 'Global Implementation of Marine Protected Areas: Is the Developing World Being Left Behind?' (2012) 36 *Marine Policy* 727.

5 Pedro Fidelman, Louisa Evans, Michael Fabinyi, Simon Foale, Josh Cinner and Franciska Rosen, 'Governing Large Scale Marine Commons: Contextual Challenges in the Coral Triangle' (2012) 36 *Marine Policy* 42.

collaboration has been described as ‘institutional entrepreneurship’ and has been used to analyse how the CTI evolved from a highly scientific expert-driven concept to a programme whose broad political and public appeal spans issues ranging from food security and border stability to climate change.⁶ These entrepreneurial partnerships serve to enhance the regulatory capacity and statutory powers of government whilst simultaneously fulfilling the conservation priorities of predominantly Western donors and the *raison d’être* of those environmental organisations which they support. Furthermore, the ‘hybrid’ forms of governance resulting from these partnerships raise distinct questions relating to the assumption of authority by non-State actors and the consequences for participation, particularly with regard to weaker stakeholder groups.⁷

2 Borders, Statelessness and Marine Conservation

The CTI is particularly notable in that it represents a process of increasing state control over people and resources in a region long characterised by border disputes and contested histories of statehood. Pre-colonial ‘states’ in the nineteenth century Malay world were loosely-defined areas of population often located in strategic locations such as river mouths. Borders dividing these ‘port-polities’ were not needed, given their tendency to expand and contract over time subject to levels of control over the surrounding population in relation to shifting market demand for upriver resources and the often short-lived nature of the polities themselves.⁸ This absence of borders, particularly in maritime regions, contrasts sharply with the urgency amongst colonial rulers to exercise sole influence over their new territorial claims in South-East Asia. The arbitrary delineation of borders in the nineteenth century which still persist today was thus incompatible from the outset both with people’s movements in a borderless world and with pre-existing conceptions of state control over these activities. Formal boundary delineation continues today as nation-states seek to guard their sovereignty and ‘territorialise’ the regions under their control through creating political and social boundaries

6 Franciska Rosen and Per Olsson, ‘Institutional Entrepreneurs, Global Networks and the Emergence of International Institutions for Ecosystem-Based Management: the Coral Triangle Initiative’ (2013) 38 *Marine Policy* 195.

7 Derek Armitage, Rob de Loe and Ryan Plummer, ‘Environmental Governance and its Implications for Conservation Practice’ (2012) 5 *Conservation Letters* 245.

8 Carl A Trocki, ‘Borders and the Mapping of the Malay World’ (Association of Asian Studies Meeting, San Diego (California), March 2000).

which influence people's behaviour.⁹ The recent extension of territoriality resulting from declarations of maritime exclusive economic zones in the post-independence period only exacerbated the porosity of these borders, which in turn has had an impact on resident communities' claims to citizenship and the responses of the modern state to these claims. The continuities between this process of territorialisation and initiatives such as the CTI are highlighted by the heavy reliance of conservation planners on mapping and spatial planning techniques.¹⁰

The Bajau Laut who reside along the east coast of Sabah, Malaysia, are one group of resource users in South-East Asia experiencing the impact of heightened regulatory measures under the CTI. Often referred to somewhat pejoratively as 'sea nomads', the Bajau Laut (also known as the Sama Dilaut) are characterised by a tradition of mobile lifestyles spent largely aboard houseboats in extended family groupings. This practice is shared with three related ethnic groups across maritime South-East Asia, comprising the Moken of the Mergui Archipelago, the Orang Laut who are present along the western Thai-Malay peninsula to the Riau Archipelago and the Sama-Bajau of eastern Indonesia and the southern Philippines, to whom the Bajau Laut of Sabah are closely affiliated linguistically. However, relatively few instances of 'sea nomadism' are extant across contemporary South-East Asia, with market forces and government initiatives resulting in semi-permanent 'water villages' of stilt houses connected by bridges constructed over bays or reef flats. Despite this sedentarisation, the Bajau Laut and other formerly nomadic communities retain their ethnic identity through limiting their contact with more powerful ethnic groups. The trading of fish and other marine products for rice, salt, water and other basic necessities are often the sole mechanism of interaction with land-based populations, continuing a relationship documented since the time of European contact.¹¹

The position of the Bajau Laut is rendered precarious by the condition of statelessness which affects many individuals within this and other ethnic minorities in Malaysia. The outbreak of civil unrest in the southern Philippines in the mid 1970s led to an influx of thousands of Bajau Laut and other ethnic

9 Nancy L Peluso and Peter Vandergeest, 'Genealogies of the Political Forest and Customary Rights in Indonesia, Malaysia and Thailand' (2001) 60 *Journal of Asian Studies* 637.

10 Morena Mills, Robert L Pressey, Rebecca Weeks, Simon Foale and Natalie C Ban, 'A Mismatch of Scales: Challenges in Planning for Implementation of Marine Protected Areas in the Coral Triangle' (2010) 3 *Conservation Letters* 291.

11 Clifford Sather, *The Bajau Laut: Adaptation, History and Fate in a Maritime Fishing Society of South-Eastern Sabah* (OUP 1997).

groups into nearby Sabah. Whilst some were accorded refugee status, many did not seek to register themselves as refugees. The conditions attached to the refugee pass have changed frequently in the intervening period, rendering many ineligible for continued status as a refugee. Consequently, a large number of Bajau Laut people in Sabah are *de jure* or *de facto* stateless, possessing no valid Malaysian identity documentation or being unwilling or unable to return to restive areas in the southern Philippines. Furthermore, under the Malaysian Births and Deaths Registration Act (1957), a child will be deemed stateless if s/he does not possess birth registration documents proving the citizenship of both parents.¹² Thus, statelessness is passed down the generations, as many Bajau Laut living in Sabah are neither Malaysian citizens nor have valid refugee status. Malaysia is not a signatory to either the 1954 UN Convention Relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness. Stateless people cannot access healthcare and education in Malaysia¹³ and are vulnerable to violence, detention or arrest at the hands of State-licensed armed volunteer 'security forces'.¹⁴

3 Conservation and its Consequences for the Bajau Laut

In order to examine how the stateless Bajau Laut are impacted by contemporary marine conservation initiatives in South-East Asia, it is necessary to analyse how these programmes are devised and implemented with particular attention to rights of resource access and usage. The Bajau Laut of eastern Sabah live within the Sulu-Sulawesi Marine Ecoregion (*hereinafter*: SSME), which is one of the regional planning units incorporated within the CTI. The SSME includes the Tun Sakaran Marine Park (*hereinafter*: TSMP), which is the largest marine park in Malaysia, covering around 350km², and is also the only marine park to include a resident population which consisted of approximately 2500 people in 2006.¹⁵ The same report concluded that approximately 60 per cent of the park's population may be considered stateless, with the Bajau Laut

12 Mohammad Azizah, 'Abandoned Child's Right to Identity Protection in Malaysia' (2011) 8 US-China Law Review 389

13 Ismail Ali, 'Since Birth till Death, What is their Status? A Case Study of the Sea Bajau in Pulau Mabul, Semporna' (2010) 1 Journal of Arts Science and Commerce 156.

14 Amarjit Kaur, 'Refugees and Refugee Policy in Malaysia' (2007) 18 UNEAC Asia Papers. <<http://www.une.edu.au/asiacentre/PDF/No18.pdf>> accessed 16 September 2013.

15 Elizabeth Wood, Muhamad Suliansa, Irwanshah Mustapa and Helen Brunt *Results of the 2006 Community Census* (2007) Semporna Islands Conservation Project.

accounting for around half of this group, whilst only 17% of park residents were Malaysian citizens. To the north lies the proposed Tun Mustapha Park (*hereinafter*: TMP) which, at an estimated size of over 10,000km², will be one of the largest marine parks in Asia and is due to be gazetted in 2015. Estimates indicate that the Sama-Bajau population adjoining the proposed TMP could number 20,000,¹⁶ although the extent of statelessness in this region is unknown.

It is widely recognised that resource management is more effective when those with a livelihood interest in the resource, commonly referred to as stakeholders, are actively involved in decision-making. Participation serves to increase compliance, reduce enforcement costs and integrate local environmental knowledge into management. However, ambiguities are introduced when decisions are made regarding who should actually participate and what form of participation takes place.¹⁷ The selection of stakeholders and choice of participatory processes can both be readily manipulated to minimise opposition to a project.¹⁸ The entrepreneurial partners driving the CTI process include NGOs who restrict active collaborative participation to 'key stakeholders' who are defined as capable of exerting high influence over a particular project and who will be significantly impacted in economic terms by the project outcomes.¹⁹ This approach to participation ensures that local resource users whose livelihoods are directly affected by resource management are systematically excluded from these decision-making processes. Where these resource users are also stateless, there is clearly no compunction for governments to intervene or otherwise represent their interests in policy making, thereby further reinforcing their exclusion. In this situation, civil society organisations in the form of local 'grassroots' NGOs or other support groups may often act on behalf of stateless groups. However, the national government of Malaysia categorises stateless individuals, refugees and others as 'illegal' and denies them access to education or health care provided by either the state or the NGO sector.²⁰ Similarly, state-level organisations such as the parks authority

16 Kazafumi Nagatsu, 'The Sama-Bajau In and Around Sulawesi: Basic Data on their Population and Distribution of the Villages' <http://sulawesi.cseas.kyoto-u.ac.jp/download_final.html> Accessed 14 September 2013.

17 Trevor Parfitt, 'The Ambiguity of Participation: A Qualified Defence of Participatory Development' (2004) 25 *Third World Quarterly* 537.

18 Anna Wesselink, Jouni Paavola, Oliver Fritsch and Ortwin Renn, 'Rationales for Public Participation in Environmental Policy and Governance: Practitioners' Perspectives' (2011) 43 *Environment and Planning A* 2688.

19 World Wide Fund for Nature, *Stakeholder Analysis* (WWF 2005).

20 Helen Brunt, *Stateless Stakeholders: Seen But Not Heard? The Case of the Sama Dilaut in Sabah, Malaysia* (University of Sussex 2013).

feel unable to offer services to these populations lest the national government accuse them of harbouring and encouraging aliens.

This stance is backed up by frequent assertions in the popular and academic media that the Bajau Laut are prone to commit crime, take drugs and cause environmental damage.²¹ The incursion by representatives of a claimant to the sultanhip of Sulu seeking to reclaim Sabah for the Sultanate in February 2013 has hardened the official stance against 'illegals', who are increasingly being referred to as potential terrorists.²² Recent developments in late 2013 indicate that State policy is favouring forced relocation of Bajau Laut residents and other undocumented or non-Malaysian people from their villages, which are described as 'squatter settlements' characterised by ill-health and centres for smuggling people and goods. However, relocation to public housing projects only applies to individuals holding citizenship documents, with the State refusing to provide any facilities for relocated non-citizens,²³ thus amounting effectively to a policy of expulsion for stateless individuals.

4 Future Prospects for the Bajau Laut

Maritime spaces across South-East Asia are becoming increasingly territorialised through marine conservation initiatives such as the CTI. Whilst marine resource users enjoy little influence over these policies, stateless resource users in the Malaysian context such as the Bajau Laut receive no formal recognition, representation or assistance and thus will continue to be further marginalised through these processes. One response by the Bajau Laut could involve migration away from coastal areas to urban centres, which is already noted as commonplace in the southern Philippines and Sulawesi, often resulting in the creation of a highly vulnerable urban underclass, largely reliant on begging.²⁴ Alternatively, individuals could return to a predominantly nomadic maritime lifestyle, which is more typical of Bajau Laut response to threats in the past,

21 Editorial, 'Semporna: A Dangerous District' *Daily Express* (Kota Kinabalu, 16 July 2013) 9. Wan SW Hassan, Marja A Omar and Ramli Dollah, 'The Illegal Immigrants in Sabah: Why Do They Come Back?' (2010) 4 *Borneo Research Journal* 115.

22 Editorial, 'Sulu Terrorists Could Return' *Borneo Insider* (Kota Kinabalu, 11 July 2013) 10.

23 Editorial, 'Simunul Residents to be Relocated to Two New Settlements in Stages' *Daily Express* (Kota Kinabalu, 13 September 2013) 9.

24 Nimfa L Bracamonte, 'Evolving a Development Framework for the Sama Dilaut in an Urban Centre in the Southern Philippines' (2005) 36 *Borneo Research Bulletin* 185.

whereby mobility was an asset used to avoid conflict with more powerful land-based groups. Such a process would be facilitated by the extensive network of formal and informal trading and familial links which connect maritime communities across contemporary South-East Asia²⁵ and is becoming apparent in some Bajau Laut communities in Sabah.²⁶ In either situation, the longer term prospect for the Bajau Laut implies further erosion of living conditions, continued denial of access to State resources and, perhaps most importantly, being rendered invisible to external development, aid and relief initiatives. As the European Network on Statelessness has commented, 'the stateless are the easiest to exclude [from development] and their exclusion is least likely to be noticed.'²⁷ The recognition and inclusion of stateless groups in development programmes is clearly essential if the latter are to address inequality. It is therefore incumbent upon the national government to recognise the conditions which have resulted in statelessness within the Bajau Laut community and, through so doing, facilitate their access to basic human rights such as health care and education. In the longer term, mutual benefits can be developed enabling subsistence resource users to co-exist alongside conservation initiatives, which will be essential for the survival of vulnerable groups such as the Bajau Laut.

25 Lance Nolde, 'Great is Our Relationship with the Sea: Charting the Maritime Realm of the Sama of Southeast Sulawesi, Indonesia' (2009) 9 *Explorations* 15.

26 Helen Brunt, *Stateless Stakeholders: Seen But Not Heard? The Case of the Sama Dilaut in Sabah, Malaysia* (University of Sussex 2013).

27 European Network on Statelessness, 'Statelessness, Human Rights and Development: It's Time to Connect the Dots' <<http://www.statelessness.eu>> Accessed 17 October 2013.